

**WATER LEASE AGREEMENT
CITY OF BRIGHTON**

This Water Lease Agreement (hereinafter "Agreement"), is made and entered into this ____ day of _____, 2021, by and between the CITY OF BRIGHTON, a Colorado home rule municipal corporation located at 500 South 4th Avenue, Brighton, Colorado 80601, (hereinafter "Lessor") and JIM MCCLAY OF MCCLAY FARMS, whose address is 9033 County Road 26, Fort Lupton, Colorado 80621 (hereinafter "Lessee").

WITNESSETH:

WHEREAS, Lessor is the owner of the water and water rights represented by seventy (70) shares of capital stock in the Lupton Meadows Ditch Company ("Lupton Meadows") as evidenced by Stock Certificate No. 764 ("Lupton Meadows Shares"), and

WHEREAS, Lessee desires to lease the use of the water rights represented by the Lupton Meadows Shares in such amounts and upon such terms as the shares may be entitled and Lessor desires to lease such water to Lessee for irrigation on Lessee's lands as further described below.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the adequacy of which is hereby confessed and acknowledged by the Lessee and Lessor, the Lessee and Lessor agree as follows:

1. Lease Water. Lessor hereby leases to Lessee water yielded by the Lupton Meadows Shares (hereinafter referred to as the "Leased Water"). Lessee shall take delivery of such water in the same measure and location as historically delivered pursuant to the rules, policies, governing documents and operations of Lupton Meadows. Lessee shall take possession of the Leased Water at the point of delivery. Lessee shall use the Leased Water for the agricultural irrigation of the lands that were historically irrigated with the water yielded by the Lupton Meadows Shares. During the term of this Lease, Lessor shall pay Lupton Meadows assessments on the Lupton Meadows Shares in full and on time and Lessee shall promptly reimburse Lessor for said assessments.

2. Term. Lessee agrees that Lessee shall order and receive all of the leased water during the 2021 irrigation season; and Lessee shall use all of the leased water for irrigation on Lessee's lands during the 2021 irrigation season. Lessee shall have the option to lease the Lupton Meadows Shares pursuant to the terms of this Agreement on an annual basis for a period of up to three (3) years, through the 2023 irrigation season. If Lessee is to exercise this option, Lessee must provide Lessor with written notice on or before February 15th of each year stating that Lessee wishes to exercise its option and seeks performance from Lessor. Failure to provide such notice shall terminate this Agreement and the parties shall have no further obligations under

this Agreement, and this Agreement shall be of no force or effect. Lessee shall have thirty days from February 15th of each year to cure any failure to provide the notice as described herein.

3. Lease payment. As rent, Lessee shall pay to Lessor the amount of [zero] dollars (\$0.00) for each acre-foot of water leased under and pursuant to this Agreement but shall reimburse Lessor for all assessments as described in paragraph 1.

4. Delivery of Water and Transit Loss. Lessee shall be responsible for coordinating with Lessor the releases of the Leased Water. Lessee shall abide by all policies, rules and regulations of Lupton Meadows regarding the transport of the Leased Water.

a. Lessee shall be responsible for, and shall bear, any carriage loss or charge, transit loss, ditch loss (whether by seep, evaporation, or otherwise) or similar loss of the amount of Leased Water from the point of delivery of the Leased Water to the place of irrigation on Lessee's lands.

b. Lessor makes no representations or warranties as to the quality or yield of the Leased Water.

c. Lessee is responsible for any maintenance of delivery structures from the farm headgate to the irrigated parcel during the term of this Agreement.

d. Lessor may provide an equivalent amount of Leased Water from other sources at Lessor's option.

5. No Rights Conferred. Except as otherwise provided in this Agreement, the parties acknowledge that all the Leased Water is intended for the present and future use of the Lessor. It is further understood and agreed to by the parties that this Agreement shall confer no rights in such Leased Water in Lessee, other than as set forth in paragraph 1 hereof, nor shall any future needs of Lessee for water enable Lessee to make claim against the Lessor for any of the Leased Water, other water or water rights. Lessee further acknowledges the statutory prohibition against vesting of a right for a continued lease expressed in C.R.S. §31-35-201 applies in these circumstances.

6. Lessor Right to Request Use. The parties hereto acknowledge that hydrologic and other conditions may exist wherein Lessee may not need all or a portion of the Leased Water available to it under this Agreement. The Lessor may contact Lessee, not more frequently than once per day, to determine if any of the Leased Water hereunder will not be needed. If any of the Leased Water will not be needed by Lessee, the Lessor, at its option, may use the same for any purpose.

7. Non-Assignability and No Subleases. Lessee may not assign its rights or delegate its duties hereunder without the prior written consent of Lessor. Lessee may not sublease the Leased Water to which they are entitled pursuant to this Agreement without the permission of the Lessor, which permission the Lessor may grant or withhold at its discretion.

8. Historical Use and Accounting. Lessee shall maintain the historical use of the Lupton Meadows Shares during the term of this lease and provide usage information to Lessor.

a. Lessee shall report the amount of water it uses pursuant to the Lupton Meadows Shares to any Lupton Meadows ditch superintendent or the water commissioner (as the Lupton Meadows may require) in such form and at such times as required the Lupton Meadows and/or water commissioner.

b. By November 1st of each lease year, Lessee shall measure and report to Lessor the amount of water it uses pursuant to the Lupton Meadows Shares. Lessee's reports shall include the amounts of water diverted and applied to irrigation on a monthly basis, the location of use, the acres irrigation, the crops grown, the identification of other water rights used on the property, records of diversion for the farm headgate onto the property to the extent they exist, the date irrigation commences and the date irrigation ceases.

9. Irresistible Force. No party to this Agreement shall be liable or responsible for any delay or failure to perform under this Agreement due to conditions or events of irresistible force. Irresistible force shall mean any delay or failure of a party to perform its obligations under this Agreement caused by events beyond that party's reasonable control, including, without limitation, acts of God, terrorism, explosion, vandalism, earthquakes and tornadoes. For purposes of this Agreement, Irresistible Force shall also include a material alteration in the historical operations of Lupton Meadows with respect to Lessor's deliveries and exchanges, such that delivery of water to the Lessee's property is affected, and in such event, the Lessor's and Lessee's obligations pursuant to this Lease shall be suspended for such time and to the extent of such curtailment of water delivery or terminated at the option of Lessor.

10. Termination. Either Party may terminate this Lease upon notice to the other party at any time upon thirty (30) days advance notice.

11. Notices. All notices shall be in writing and shall be delivered by hand delivery or U.S. mail, postage prepaid, to the parties at the addresses set forth below. Notices shall be deemed received three days after deposit in the U.S. mail, postage prepaid.

City of Brighton
500 South 4th Avenue
Brighton, CO 80601

Jim McClay/McClay Farms
9033 County Road 26
Fort Lupton, CO 80621

12. Indemnification. Lessee shall indemnify and hold harmless the Lessor for all claims, causes of action and damages which arise or result from: (1) the conveyance, transport or running of the Leased Water through any ditch, pipeline, or similar conveyance structure and its appurtenances from and including the point of delivery to the place of irrigation on Lessee's lands, and (2) Lessee's application of the Leased Water on and to Lessee's lands.

13. Binding Effect. This Agreement and the rights and obligations recited in it shall be binding upon and inure to the benefit of the Lessee and the Lessor and their heirs, successors and assigns. Lessee may not assign its rights or duties recited in this Agreement without the prior written consent of Lessor, except as expressly permitted by Section 7.

14. Headings. Headings and titles contained in this Agreement are intended for the convenience of the parties only and are not intended to confine, limit, or describe the scope of intent of any provision.

15. Entire Agreement. This writing constitutes the entire Agreement between Lessor and Lessee and supersedes all prior written or oral communications, negotiations, agreements, representations and understandings of the parties with respect to the subject matter contained herein.

IN WITNESS HEREOF, the undersigned parties have caused this Agreement to be executed on the day and year first written above.

LESSOR:

CITY OF BRIGHTON

By: _____
_____, _____

LESSEE:

By: _____
Jim McClay, McClay Farms